

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

-
WRIT PETITION No.34438 of 1997

Between:

S.Sudarshan Goud.

..... PETITIONER

AND

**1.The Additional Labour Court,
1st floor, Chandravihar Building,
M.J.Road, Nampally, Hyderabad,
Rep. by its Chairman, and another.**

.....RESPONDENTS

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The Hon'ble Sri Justice C.V.Nagarjuna Reddy

-
Writ Petition No.34438 of 1997

Order:

This Writ Petition is filed questioning the award
dated
29-04-1997 passed by the first respondent-Additional
Labour Court, Hyderabad in I.D.No.110 of 1995,

whereby the claim of the petitioner for alteration of his date of birth was rejected.

The petitioner joined the service of the second respondent-Company in the year 1957 and worked continuously till he retired from service with effect from 30-09-1995. The petitioner raised an Industrial Dispute being I.D.No.110 of 1995 before the first respondent-Labour Court taking the plea that his actual date of birth was 30-06-1942 and that he was prematurely retired from service by wrongly treating his date of birth as 02-09-1937 as determined by the medical board. The first respondent-Labour Court, after elaborate consideration of the evidence on record, dismissed the Industrial Dispute raised by the petitioner. Feeling aggrieved by the same, the present Writ Petition has been filed.

Heard Sri V.Narsimha Goud, the learned Counsel for the petitioner. None appeared for the respondents.

Sri Narsimha Goud, the learned Counsel for the petitioner, contended that the first respondent-Labour Court did not afford the petitioner a reasonable

opportunity of being heard. He further submitted that in spite of availability of clinching evidence to show that the petitioner's date of birth was 30-06-1942, the first respondent-Labour Court erroneously rejected his claim.

I have gone through the entire record.

As regards the first contention, I have looked into the docket proceedings of the Industrial Dispute which show that after closure of the respondent's evidence on 22-03-1997, the case was posted for filing written arguments on 04-04-1997. As both sides were not ready, the case was again adjourned to 11-04-1997 and on that day also, both sides were not ready with their written arguments. Therefore, the matter was adjourned to 22-04-1997, on which date, the second respondent-Company filed written arguments and the matter was again adjourned to 29-04-1997 for filing written arguments by the petitioner. However, on 29-04-1997, the petitioner did not file written arguments or advance oral arguments. Therefore, on the same day, the hearing was closed and the award impugned in this Writ Petition was passed. When the petitioner sought to file written arguments on 02-05-1997, the first respondent-

Labour Court refused to receive the same with an endorsement that the award had already been passed on 29-04-1997.

Although Sri Narsimha Goud, the learned Counsel for the petitioner, strenuously contended that the first respondent denied the petitioner, a reasonable opportunity of being heard, on a perusal of the record, I am unable to agree with his contention. As already noted above at least on three occasions, the first respondent-Labour Court had given an opportunity to both sides to file their written arguments, but, the petitioner did not choose to avail such opportunities. In view of these facts as borne out by the record, the contention of the learned Counsel for the petitioner that the first respondent-Labour Court has not afforded a reasonable opportunity to the petitioner cannot be accepted.

Apropos the other contention of the learned Counsel for the petitioner that the first respondent-Labour Court committed an error in rejecting the claim of the petitioner, I have carefully gone through the material on record. It is an admitted fact that the petitioner did not produce any certificate in support of his date of birth,

initially, when he joined the services of the second respondent-Company in the year 1957. Evidently, the petitioner's date of birth was not finalized till the year 1977. On 31-08-1977, Ex.M.2-intimation was sent to the petitioner stating that although a notice dated 06-04-1977 was issued to him earlier, he has neither produced the school-leaving certificate nor appeared before the medical panel for determination of his age. A similar intimation, which was marked as Ex.M.3, was given to the petitioner on 01-09-1977. Eventually, the petitioner was subjected to medical examination on 02-09-1977 and a report was submitted by the Medical Board, on the basis of which, an intimation was given to the petitioner on 11-08-1978 wherein it was stated that the petitioner's age was determined as 40 years as on 02-09-1977 i.e., the date on which the petitioner was subjected to medical examination. On the said certificate an endorsement was made by the petitioner as 'date of birth certificate will be produced later'.

It is an admitted fact that the petitioner has not produced the proof of his date of birth till the year 1994 i.e., a few months prior to his scheduled date of retirement. In the year 1994, for the first time, the petitioner produced Ex.W.1-Transfer Certificate dated

11-02-1992 issued by Refa-e-am High School which contains the date of birth of the petitioner as 30-06-1942. It is also significant to notice that in Ex.M.4-Biodata given by the petitioner in the year 1977, the petitioner himself mentioned his date of birth as "1943".

Before the first respondent-Labour Court, the petitioner examined himself as WW.1 and his father as WW.2 and marked Exs.W.1 to W.9, while the Management examined one M.S.Manohar as MW.1 and marked Exs.M1 to M.14.

After considering the entire evidence on record, the first respondent-Labour Court held that the claim of the petitioner for alteration of his date of birth is too belated and the same cannot be entertained. The first respondent further held that the Management has finalized the date of birth of the petitioner after strictly following the procedure contained in Clause 26 of the Standing Orders and therefore, the petitioner's claim for alteration of date of birth was liable to be rejected on the ground of laches such as failure to make such a claim for a period of 18 years, in spite of notices having been issued by the Management for production of documents supporting his date of birth._

The Supreme Court, time and again, held that the belated claims of employees for alteration of date of birth, especially, at the stage of retirement needs to be considered with lot of care and caution. In ***Secretary and Commissioner, Home Department and others vs. R.Kirubakaran***^[1], the Supreme Court while dealing with a case where an interim direction not to retire an employee was granted, held that an employee claiming alteration of date of birth shall produce the evidence in support of his claim, which may amount to irrefutable proof relating to his date of birth and that whenever such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. It was also observed that in many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books and by this process, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months after the date of superannuation.

After considering the case of the petitioner in its entirety, I am of the view that the first respondent was justified in rejecting the claim of the petitioner on the ground that it suffers from laches and huge delay. The record shows that the petitioner has been taking prevaricative stands from time to time. In the first place, he claims to have studied up to 6th Class but did not file his transfer certificate at the time of his joining in the service in the year 1977. When notices were issued to him reminding him that he did not produce the proof of age and that he should appear before the Medical Board, he appeared before the Medical Board without any demur. Though on Ex.M.1-communication he made an endorsement that his date of birth certificate will be produced later, in Ex.M.4-Biodata, which was admittedly filled with his own handwriting, he mentioned against the column meant for Date of Birth as "1943". Very surprisingly, having made an endorsement on Ex.M.1-Biodata that he will produce the certificate later, he kept quiet for 18 long years without producing any proof of his date of birth. He never challenged the communication dated 11-08-1978, which was admittedly received by him in the year 1978. From these circumstances, it is clear that the petitioner, who deliberately waited for

more than 18 years, came out with a claim just on the eve of his retirement. I have, therefore, no doubt in my mind that the claim of the petitioner is wholly speculative.

The learned Counsel for the petitioner submitted that the second respondent indulged in invidious discrimination. He contended that one Samuel, who was also an employee of the second respondent-Company, produced a transfer certificate and the second respondent-Company accepted the age mentioned in that certificate as against the age determined by the medical board, and retired him.

The first respondent-Labour Court has adverted to this contention and observed that on the eve of his promotion, Mr.Samuel produced a transfer certificate, in which, his age was shown as higher than the age determined by the medical board. The employer therefore, taking advantage of the declaration given by Mr.Samuel, had retired him prematurely. The employer has, thus, acted to his advantage and the petitioner by citing this instance cannot derive any advantage. The question of discrimination in this case, therefore, does not arise.

Apart from the fact that the petitioner's claim was wholly belated, the petitioner failed to establish the genuineness of Ex.W.1-Transfer Certificate as he has not examined the author of the certificate.

The learned Counsel for the petitioner vehemently contended that since the first respondent has not disputed the correctness of the said certificate there was no obligation on the petitioner to examine the headmaster, who issued the said transfer certificate.

I am unable to agree with this contention. As held by the Supreme Court, the onus is heavily on the petitioner, who came out with a claim for correction of date of birth after about 18 years of determination of his age by the employer. Therefore, the burden is much more on the petitioner to substantiate his case by adducing proper and relevant evidence. In my considered opinion, even in the absence of any objection taken on behalf of the Management, Ex.W.1-transfer certificate, which, allegedly, contains the correct date of birth of the petitioner, cannot be given its due weight unless the author of the said certificate was examined and the Management was given an opportunity of cross-examining him on the

genuineness or otherwise of the said certificate.

For all the foregoing reasons, I do not see any error in the award passed by the first respondent-Labour Court.

The Writ Petition is, therefore, dismissed. No costs.

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[\[1\]](#) AIR 1993 Supreme Court 2647